IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8942 of 2003
with
CIVIL APPLICATION No 9155 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SIDDHARTH EDUCATION SOCIETY
Versus
REGIONAL DIRECTOR,

Appearance:
1. Special Civil Application No. 8942 of 2003
MR RR VAKIL for Petitioner No. 1
MR PK JANI for Respondent No. 1
MS NANDINI JOSHI AGP for Respondent No. 2-3
NOTICE SERVED BY DS for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 16/12/2003

ORAL JUDGEMENT

The petitioner-institution applied for permission to establish a college for running B.Ed. course. Before

an institution can establish such a college, the institution is required to obtain the permission from the National Council for Teachers Education (NCTE) as per the provisions of the National Council for Teachers Education Act, 1994. The institution is also required to obtain No Objection Certificate from the State Government.

2. The petitioner's case is that the petitioner had applied to the State Government on 23.12.2002 for establishing a college for B.Ed. course with effect from the academic year 2003-04 and similarly the petitioner had submitted its application before the NCTE also. The NCTE by its communication dated 10.2.2003 (Annexure C) informed the petitioner that since the petitioner has not obtained NOC from the Government of the State of Gujarat, the petitioner's application for permission to start a new course cannot be considered. Thereafter, the State Government has rejected the petitioner's application for NOC as per its communication dated 19.4.2003 (Annexure A). Hence, the petitioner-institution has challenged both the communications at Annexures "C" and "A" from the NCTE and the State Government respectively.

3. As regards challenge to the NCTE communication dated 10.2.2003, Mr Vakil has relied on the decision of the Apex Court in St. Johns Teachers Training Institute vs. Regional Director, National Council for Teachers Education & Anr., JT 2003 (2) SC 35 and the order dated 5.3.2003 by another learned Single Judge of this Court in Special Civil Application No.40 of 2003 and also the interim order passed in the present petition on 6.9.2003 requiring the NCTE to consider the petitioner's application for permission in light of the aforesaid decision of the Hon'ble Supreme Court and also the aforesaid order dated 5.3.2003 in Special Civil Application No.40 of 2003.

4. After the aforesaid interim order was passed by the Court on 6.9.2003, the NCTE has filed Civil Application No.9155 of 2003 submitting that in view of the statutory regulations as upheld by the Hon'ble Supreme Court, the NCTE cannot consider an application for permission to establish a training course for teachers without an NOC/endorsement of the State Government.

It is further submitted that after the aforesaid decision of the Apex Court on 7.2.2003, the NCTE has issued notification dated 6.6.2003 specifying the time limit for the State Government to grant NOC/endorsement within six months of the last date of receipt of

application for grant of NOC fixed by the concerned State Government. The relevant clause of the said notification reads as under:-

"(ii) Every State Government/UT Administration shall endeavour to dispose of the application of the institution seeking NOC for starting a course or training in teacher education or seeking permission to start a new course or training and/or increase in intake, as expeditiously as possible, and shall provide its NOC/endorsement within six months of the last date of receipt of application for grant of NOC fixed by the concerned State Government/UT."

(emphasis supplied)

It is submitted that thus the amended regulations have taken care of the hardship which was pointed out by the Apex Court in the aforesaid decision in St. Johns Teachers Training Institute vs. Regional Director, National Council for Teachers Education & Anr. (supra). It is, therefore, submitted by the Council through its learned counsel Mr PK Jani that the petition may be dismissed in so far as the NCTE is concerned.

5. On behalf of the State Government, Ms Joshi, learned AGP has submitted that as the State Government has taken the decision and communicated the same to the petitioner on 19.4.2003, no interference with the same is called for.

6. Having heard the learned counsel for the parties, it appears to the Court that since the State Government's communication dated 19.4.2003 does not indicate or disclose any reasons whatsoever for rejecting the petitioner's application for NOC, it is impossible to fathom the reasons which compelled the Government for not granting the NOC in favour of the petitioner. It may be that because the NCTE had rejected the petitioner's application for permission by its communication dated 10.2.2003, the same might have appealed to the State Government for rejecting the petitioner's application for NOC. However, a perusal of the NCTE communication dated 10.2.2003 makes it clear that the petitioner's application was not being processed because the petitioner had not produced the NOC from the State Government. If this is the case, the State Government cannot be permitted to scuttle the petitioner's application because first the State Government is required to consider the institution's application for

NOC/endorsement and the institution is required to forward such NOC/endorsement of the State Government to NCTE. It, therefore, appears to the Court that the interests of justice require the impugned communication dated 19.4.2003 of the State Government at Annexure "A" to the petition to be quashed and set aside so that the petitioner-institution gets an opportunity of satisfying the State Government that its application for NOC/endorsement is required to be duly considered.

7. Hence, the interim direction dated 6.9.2003 given by this Court while admitting the petition is recalled and the petition is disposed of in terms of the following directions:-

(i) The communication dated 19.4.2003 of the State Government at Annexure "A" to the petition is hereby quashed and set aside.

(ii) The State Government in the Education Department is directed to give the petitioner-institution an opportunity of being heard regarding its application for NOC and thereafter the State Government shall decide the same in accordance with law as expeditiously as possible and in any case within one month from the date of receipt of writ of this Court or a certified copy of this order, whichever is earlier.

(iii) Depending on the outcome of the said application for NOC/endorsement, the NCTE shall thereafter process the petitioner's application for permission under the provisions of National Council for Teachers Education Act, 1994 and in accordance with the Regulations framed thereunder.

(iv) The State Government shall pass a speaking order, in case the application for NOC is not to be granted.

8. Rule is made absolute to the aforesaid extent only with no order as to costs.

9. The civil application accordingly stands disposed of.

(M.S. SHAH, J.)

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